

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
LEONARD AND MARION LIPPETT }

For Appellants: Sol Finkelman
Certified Public Accountant

For Respondent: Tom Muraki
Acting Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Leonard and Marion Lippett against a proposed assessment of additional personal income tax in the amount of \$877.10 for the year 1969.

Appeal of Leonard and Marion Lippett

The sole issue for determination is whether appellants realized dividend income -as the result of .a **purchase of property** 'from their wholly owned corporation for less than the property's fair market value.

In 1969, appellant Leonard Lippett was the sole shareholder of Allens Jewelers of Garden Grove, Inc. During that year appellant withdrew a quantity of jewelry from the corporation and contributed it to Temple Beth Sholom. Appellant placed a fair market value of \$13,180.00 on the donated jewelry and deducted that amount as a charitable contribution on his 1969 personal income tax return. The deduction was allowed as claimed. The books of the corporation indicate that appellant was charged \$2,216.75 for the jewelry. Apparently, this amount reflected the cost of the jewelry to the corporation. Respondent treated this transaction as a sale of the jewelry to appellant at book value, resulting in -a distribution of -a dividend to him, to the extent of the difference between the amount charged for the jewelry and its fair market value.

A -distribution of property by .a corporation to a shareholder with respect to its stock shall be included in gross income to the extent the amount distributed is considered a dividend. (Rev. & Tax.. Code, §§ 17321-17324, 17381, and 17383.) The applicable regulations provide, in part:

If property is transferred by a corporation to a shareholder for an amount less than its fair market value in a sale or exchange, such shareholder shall be treated as having received a distribution to which Sections 17321 to 17324, inclusive, apply. In such case, the amount of the distribution shall be the difference between the amount paid for the property and its fair market value. (Cal. Admin. Code, tit. 18, reg. 17321917324, subds. (f) & (g).)

(See also Richard R. Riss, Sr., 56 T.C. 388, 429 (1971), aff'd, 478 F.2d 1160 (8th Cir. 1973); Lester E. Dellinger, 32 T.C. 1178, 1181-1182 (1959); Robert Binda, T.C. Memo., Aug. 30, 1963.)

In view of the statutes, the regulations and the case authority cited above, we must conclude that appellant received a taxable dividend in 1969 equal to the difference between the amount which he was charged for the jewelry and its fair market value. Accordingly, respondent's action must be sustained.

Appeal of Leonard and Marion Lippett

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Leonard and Marion Lippett against a proposed assessment of additional personal income tax in the amount of \$877.10 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April , 1977, by the State Board of Equalization.

William M. Bennett, Chairman
John Clark, Member
George E. Sney, Member
Iris Sankley, Member
_____, Member

ATTEST:

W. W. Conley, Executive Secretary